

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

ELMO BAILEY,	:	
Petitioner,	:	
v.	:	Case No. 3:14-cv-453
UNITED STATES OF AMERICA,	:	JUDGE WALTER H. RICE
Respondent.	:	

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DECISION AND ENTRY ADOPTING UNITED STATES MAGISTRATE  
JUDGE'S REPORT AND RECOMMENDATIONS (DOC. #2);  
DISMISSING PETITION FOR WRIT OF HABEAS CORPUS (DOC. #1)  
WITHOUT PREJUDICE; DENYING CERTIFICATE OF APPEALABILITY  
AND LEAVE TO APPEAL *IN FORMA PAUPERIS*; JUDGMENT TO  
ENTER IN FAVOR OF RESPONDENT AND AGAINST PETITIONER;  
TERMINATION ENTRY

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Based on the reasoning and citations of authority set forth by United States Magistrate Judge Michael R. Merz, in his December 17, 2014, Report and Recommendations (Doc. #2), as well as upon a thorough *de novo* review of this Court's file and the applicable law, this Court ADOPTS said judicial filing in its entirety. No objections have been filed within the time allotted.

Petitioner filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. §§ 2241(c)(3) and 2243, challenging the sufficiency of the evidence to support his conviction on Count 4 of the Indictment. Given that Petitioner has never filed a motion to vacate, correct or set aside his sentence under 28 U.S.C. § 2255, and

has failed to show that such a motion would be inadequate or ineffective, the Court lacks authority to entertain a habeas petition. *See* 28 U.S.C. § 2255(e).

Moreover, the proper respondent to a § 2241 habeas petition is the warden of the federal penitentiary where the petitioner is confined. *See Rumsfeld v. Padilla*, 542 U.S. 426, 434-35 (2004). Petitioner is confined at a federal penitentiary in Arizona, and this Court lacks personal jurisdiction over the warden of that facility. For these reasons, the Petition for Writ of Habeas Corpus is DISMISSED WITHOUT PREJUDICE.

Given that the Court's decision herein would not be debatable among reasonable jurists, and because any appeal from this Court's decision would be objectively frivolous, Petitioner is denied a certificate of appealability, and is denied leave to appeal *in forma pauperis*.

Judgment will be entered in favor of Respondent and against Petitioner.

The captioned case is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

Date: January 16, 2015



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WALTER H. RICE  
UNITED STATES DISTRICT JUDGE